

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL A. SAMORA,

Plaintiff,

v.

No. CIV 08-0007 WJ/CEG

JUDGE KENNETH MARTINEZ,  
DANIEL M. SALAZAR, ESQ.,  
JUANITA M. DURAN-CLERK,

Defendants.

**MEMORANDUM OPINION AND ORDER**


This matter is before the Court on a letter from Plaintiff (Doc. 9) filed on March 27, 2009. The Court entered judgment dismissing Plaintiff's complaint on June 6, 2008. Plaintiff's letter states that he did not receive the Court's disposition of his complaint and he is "requesting my rights to appeal." The Court construes the letter as a motion for leave to file a late notice of appeal or, alternatively, to reopen the time for appeal. According to the docket, Plaintiff filed no notice of change of address during the pendency of his complaint. *See* D.N.M. LR-Civ. 83.6.

Under rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, a notice of appeal in a civil action must be filed within thirty days after the order or judgment. As the Supreme Court reaffirmed recently in *Bowles v. Russell*, 127 S. Ct. 2360 (2007), the time for filing a notice of appeal is "jurisdictional," and a notice filed after the deadline is untimely even if filed in reliance on a district court order extending the time. *See Bowles*, 127 S. Ct. at 2366. Under another provision of appellate rule 4, "[t]he district court, however, may extend the time upon a showing of 'excusable neglect or good cause,' if a party moves for an extension no later than thirty days after the appeal time has expired." *Bishop v. Corsentino*, 371 F.3d 1203, 1206 (10th Cir. 2004) (quoting

Fed. R. App. P. 4(a)(5)(A)). As indicated by the dates above, Plaintiff did not file his motion within the specified thirty-day period. Plaintiff will be denied leave to file a late notice of appeal.

Alternatively, the Court construes Plaintiff's letter as a motion to reopen the time for appeal. Under appellate rule 4(a)(6), a district court may reopen the time for an appeal in certain circumstances. One condition is that the motion must be filed within 180 days after entry of the order that the party wishes to appeal. *See* Fed. R. App. P. 4(a)(6)(B). Here again, Plaintiff failed to file his letter-motion within the 180-day period, and he will be denied leave to reopen.

IT IS THEREFORE ORDERED that Plaintiff's letter filed on March 27, 2009, construed herein as a motion for leave to file a late notice of appeal or, alternatively, as a motion to reopen time for appeal (Doc. 9), is hereby DENIED.



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UNITED STATES DISTRICT JUDGE